

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SERGEY SHILMAN,
PLAINTIFF,

-AGAINST-

MARVAT MAKRAM; ROBERT F.
CUNNINGHAM, SUPERINTENDENT,
DEFENDANTS,

AFFIRMATION OF
RE-PLEADING

NO. 14-CV-6589

HON. NELSON S. ROMAN

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10-12-18

STATEMENT OF CASE

PLAINTIFF, PROCEEDING PRO SE, COMMENCED THIS ACTION PURSUANT TO 42 U.S.C. 1983 ON DATE OF AUGUST 18, 2014 ALLEGING VIOLATIONS OF HER FOURTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS BY THE UNLAWFUL ACTIONS OF THE DEFENDANTS. PLAINTIFF HAS AMENDED HER COMPLAINT THREE (3) TIMES SINCE THE INITIAL FILING, AND FILED HER FOURTH AMENDED COMPLAINT (FAC) ON SEPTEMBER 2, 2016. (SEE, ECF NO. 25)

BY OPINION AND ORDER DATED AUGUST 6, 2018, THIS COURT GRANTED DEFENDANTS' MOTION AND DISMISSED PLAINTIFF'S FOURTH AMENDED COMPLAINT (SEE, ECF NO. 72). BY THIS SAME OPINION AND ORDER THE COURT GRANTED THE PLAINTIFF LEAVE TO RE-PLEAD CERTAIN CLAIMS AGAINST DEFENDANTS AS SPECIFIED BY THE

COURT'S OPINION AND ORDER, AND AS SET FORTH HEREIN THIS AFFIRMATION.

IN LIGHT OF PLAINTIFF'S PRO SE STATUS AND HER CURRENT INCARCERATED STATUS, PLAINTIFF WAS GRANTED AN EXTENSION UNTIL DATE OF OCTOBER 8, 2018 TO RE-PLEAD HER CLAIMS AND CAUSES OF ACTION IN CONFORMITY WITH THE COURT'S OPINION AND ORDER. (Id.)

ADDITIONALLY, BY THIS AFFIRMATION, PLAINTIFF WISHES TO CEDE TO THE WISDOM OF THE COURT'S OPINION AND ORDER, AS WELL AS THE LEGAL STANDARDS EXPOUNDED THEREIN, AND LIMIT THE RE-PLEADING OF HER CLAIMS TO THOSE CLAIMS THAT SHE IS ABLE TO SHOW A FULL AND DEFINITIVE EXHAUSTION OF ADMINISTRATIVE REMEDIES UPON BY THE REQUISITE PROVISIONS OF 42 U.S.C.A. 1997e(a), NAMELY:

1) AN EQUAL PROTECTION CLAIM BASED ON THE CLASS OF ONE THEORY, AGAINST DEFENDANT MARVAT MAKRAM,

2) A DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS CLAIM, AGAINST DEFENDANT MARVAT MAKRAM, AND

3) A DELIBERATE INDIFFERENCE CLAIM, WITH THE REQUISITE FACTS REGARDING PERSONAL INVOLVEMENT, AGAINST DEFENDANT ROBERT F. CUNNINGHAM.

IN THE INTEREST OF EFFICIENT LITIGATION, PLAINTIFF VOLUNTARILY RELINQUISHES THE OPPORTUNITY GRANTED BY THIS COURT TO RE-PLEAD HER CLAIMS AGAINST DEFENDANTS: PARKS, HAAS, GORMSLEY, HOWE, CRONYN, KATZ, AND DEFRANK.

STATEMENT OF FACTS

1.) PLAINTIFF, SERGEY SHILMAN, A DOCUMENTED TRANS-GENDER INMATE, WAS CONFINED WITHIN THE CUSTODY OF THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (HEREINAFTER "DOCCS") AT THE WOODBOURNE CORRECTIONAL FACILITY (HEREINAFTER "WOODBOURNE") DURING THE TIME PERIOD OF APRIL 16, 2014 AND JANUARY 1, 2016.

2.) DEFENDANT, MARVAT MAKRAM, WAS EMPLOYED AT THE WOODBOURNE CORRECTIONAL FACILITY DURING THE ABOVE-REFERENCED TIME PERIOD, AND WAS RESPONSIBLE FOR PROVIDING MEDICAL CARE AND SERVICES TO THE INMATES CONFINED AT WOODBOURNE.

3.) DEFENDANT, ROBERT F. CUNNINGHAM, WAS EMPLOYED AS THE SUPERINTENDENT AT THE WOODBOURNE CORRECTIONAL FACILITY DURING THE ABOVE-REFERENCED TIME PERIOD, AND WAS RESPONSIBLE FOR ALL MATTERS RELATING TO THE OPERATION OF WOODBOURNE, AND FOR THE WELFARE OF ALL THE INMATES CONFINED WITHIN THAT FACILITY.

4.) ON DATE OF MAY 29, 2014 PLAINTIFF ATTENDED SICK CALL AT THE FACILITY'S MEDICAL UNIT REQUESTING TO BE ISSUED A FEED-IN CELL PERMIT FOR REASONS ATTRIBUTED TO HER LEGITIMATE DIAGNOSIS OF A NEUROGENIC BLADDER DISORDER AND HISTORY OF FREQUENT INCONTINENCE. PLAINTIFF INFORMED MEDICAL STAFF THAT HER CONDITION PREVENTED HER FROM GOING TO THE FACILITY'S MESSHALL FOR SCHEDULED MEALS DUE TO THE UN- AVAILABILITY OF RESTROOM FACILITIES IN THE MESS- HALL DURING THESE TIMES.

5.) PLAINTIFF PROVIDED DOCUMENTATION TO MEDICAL STAFF CONFIRMING HER CONDITION IN THE FORM OF A LETTER FROM DR. JOSHUA I. GURIN, M.D., PH.D., OF THE BETH ISRAEL MEDICAL CENTER, DATED MARCH 30, 1993. (SEE, EXHIBIT A)

6.) MEDICAL STAFF DENIED PLAINTIFF THE ISSUANCE OF A FEED-IN CELL PERMIT THAT WOULD ENABLE HER TO PARTAKE OF REGULARLY SCHEDULED MEALS WITHIN HER CELL.

7.) ON DATE OF JUNE 2, 2014 PLAINTIFF FILED A GRIEVANCE RELEVANT TO THIS DENIAL BY MEDICAL STAFF AND THEIR INDIFFERENCE TO HER SERIOUS MEDICAL NEEDS. PLAINTIFF ALSO COMPLAINED OF BEING TREATED IN A DISCRIMINATORY MANNER BY MEDICAL STAFF BY THEIR USE OF PROFANE REFERENCES TO PLAINTIFF'S SEXUAL IDENTITY.

8.) PLAINTIFF'S GRIEVANCE WAS SUBSEQUENTLY-

DENIED BY DECISION OF THE FACILITY'S INMATE GRIEVANCE RESOLUTION COMMITTEE (I.G.R.C.) ON JUNE 10, 2014 (SEE, EXHIBIT B); ATTACHED TO THIS DECISION WAS A COMMUNICATION DATED JUNE 3, 2014 FROM THE FACILITY NURSE ADMINISTRATOR ADDRESSED TO THE GRIEVANCE SUPERVISOR FURTHERING THIS DENIAL. (SEE, EXHIBIT C)

9.) PLAINTIFF APPEALED THE DENIAL OF HER GRIEVANCE TO DEFENDANT ROBERT F. CUNNINGHAM, SUPERINTENDENT OF WOODBOURNE; BY SUPERINTENDENT'S REVIEW AND DECISION DATED JUNE 16, 2014, DEFENDANT CUNNINGHAM STATED THAT: "THERE IS NO MEDICAL OR PSYCHOLOGICAL NEED FOR GRIEVANT TO BE FED IN CELL." (SEE, EXHIBIT D) PLAINTIFF SUBMITTED AN APPEAL OF THIS DECISION ON DATE OF JUNE 19, 2014; THE CENTRAL OFFICE REVIEW COMMITTEE (CORC) EVENTUALLY REVIEWED THE DETERMINATION AND EFFECTUALLY DENIED PLAINTIFF'S APPEAL IN A DECISION DATED SEPTEMBER 24, 2014. (SEE, EXHIBIT E) (SEE, ALSO FOOTNOTE BELOW, AT N.1)

10.) AS A RESULT OF THESE DENIALS AND DEFENDANT'S FAILURE TO PROPERLY EVALUATE PLAINTIFF'S CONDITION IN LIGHT OF DOCUMENTARY EVIDENCE ATTESTING TO HER SERIOUS MEDICAL ISSUES (EXH. A), PLAINTIFF SUFFERED WEIGHT-

N.1: CORC FAILED TO PROVIDE PLAINTIFF WITH A TIMELY REVIEW AND DETERMINATION OF HER GRIEVANCE APPEAL IN ACCORDANCE WITH THE ESTABLISHED MANDATES OF TITLE 7 N.Y.C.R.R. 701.5, WHICH DICTATES THAT: "THE CORC SHALL REVIEW EACH APPEAL, RENDER A DECISION ON THE GRIEVANCE, ... WITHIN THIRTY CALENDAR DAYS FROM THE TIME THE APPEAL WAS RECEIVED."

LOSS, SEVERE ANXIETY, AND MENTAL ANGUISH AND DURESS, AS PLAINTIFF WAS FORCED BY DEFENDANT'S INDIFFERENCE TO HER SERIOUS MEDICAL NEEDS, TO CHOOSING BETWEEN - MISSING NUMEROUS MEALS AND RETAINING IN HER HOUSING UNIT WHERE A BATHROOM WAS READILY AVAILABLE, OR ATTENDING THE MESSHALL AND BEING SUBJECTED TO PAINFUL HUMILIATION AND DERISION WHEN EMBARRASSING ACCIDENTS OCCURRED ON ACCOUNT OF HER SERIOUS MEDICAL CONDITION.

11.) HAVING NO OTHER REMEDIES AVAILABLE TO HER, PLAINTIFF ADDRESSED LETTERS TO THE FACILITY'S SENIOR OFFENDER REHABILITATION COORDINATOR (SORC) AND CHIEF MEDICAL OFFICER OF DOCCS, DR. CARL KOENIGSMANN, SEEKING ASSISTANCE. PLAINTIFF WAS UNABLE TO OBTAIN ANY RESOLUTION FROM THESE PERSONS, AND THEIR RESPONSES ARE ATTACHED TO THIS AFFIRMATION AS EXHIBIT F AND EXHIBIT G, RESPECTIVELY.

12.) ON DATE OF AUGUST 14, 2014, PLAINTIFF ATTENDED SICK CALL AND AGAIN REQUESTED TO BE ISSUED A FEED-IN CELL PERMIT FOR REASONS DUE TO HER SERIOUS MEDICAL CONDITION; PLAINTIFF WAS ONCE MORE DENIED THIS MEDICAL ACCOMMODATION BY WOODBOURNE MEDICAL STAFF.

13.) PLAINTIFF MET WITH DEFENDANT MARVAT MAKRAM, HER ASSIGNED MEDICAL PROVIDER. DEFENDANT MAKRAM DID NOT CONDUCT A PROPER EVALUATION OF PLAINTIFF'S PRIOR DIAGNOSIS (EXH. A) OF HER SERIOUS MEDICAL CONDITION OF NEUROGENIC BLADDER DISORDER, NOR DID THE DEFENDANT TAKE ANY STEPS TO ADDRESS THE ISSUE OF PLAINTIFF'S INCONTINENCE.

14.) DEFENDANT MAKRAM ACTED IN A WHOLLY UNPROFESSIONAL MANNER TOWARDS PLAINTIFF, BECOMING IMPATIENT AND ANGRY AT THE PLAINTIFF'S INABILITY TO EXPRESS HERSELF USING THE ENGLISH LANGUAGE AND STATE HER MEDICAL CONCERNS. (SEE, FOOTNOTE, AT N.2)

15.) DEFENDANT MAKRAM ALSO MADE INAPPROPRIATE COMMENTS AND REFERENCES DIRECTED TOWARDS PLAINTIFF'S GENDER IDENTITY, TO WIT: "YOU TRANSGENDER INITIATES BELIEVE THAT YOU ARE ENTITLED TO EVERYTHING. WELL, YOU ARE NOT! I'M THE DOCTOR HERE. THIS IS MY OFFICE, AND I WILL DECIDE WHO IS PROVIDED WHAT, AND WHO ISN'T. FRANKLY, THE WORLD WOULD BE A BETTER PLACE IF THEY PACKED YOU ALL UP AND SHIPPED YOU OFF TO YOUR OWN PRISON TO LIVE OR DIE. YOU WILL NOT GET ANY SPECIAL TREATMENT FROM ME BECAUSE YOU'RE SOME SORT OF SHEMALE."

16.) DEFENDANT MAKRAM REFUSED TO CONDUCT ANY INVESTIGATION OF PLAINTIFF'S MEDICAL OR DIAGNOSTIC HISTORY RELEVANT TO THE DOCUMENTATION PLAINTIFF PROVIDED CONCERNING HER PRIOR DIAGNOSIS OF A NEUROGENIC BLADDER DISORDER AND HISTORY OF INCONTINENCE. (SEE, EXH. A)

17.) DEFENDANT MAKRAM REFUSED TO ISSUE PLAINTIFF A FEED-IN CELL PERMIT, OR PROVIDE PLAINTIFF WITH MEDICAL INCONTINENCE BRIEFS OR UNDERGARMENTS; NEITHER-

N. 2: PLAINTIFF, SERGEY SHILMAN, WAS BORN IN MOSCOW, RUSSIA IN 1967, AND IMMIGRATED TO THE UNITED STATES WITH HER PARENTS IN 1980. PLAINTIFF'S SPEECH IS HEAVILY ACCENTED AND REQUIRES AN ATTENTIVE EAR IN ORDER TO UNDERSTAND HER IN CONVERSATION.

DID THE DEFENDANT REFER, OR SCHEDULE THE PLAINTIFF TO BE EXAMINED OR EVALUATED BY A SPECIALIST OF ANY KIND.

18.) ON DATE OF AUGUST 18, 2014 PLAINTIFF FILED A GRIEVANCE RELEVANT TO DEFENDANT'S ACTIONS. PLAINTIFF'S GRIEVANCE WAS DENIED BY DECISION OF THE IGRC, AS WELL AS BY DEFENDANT CUNNINGHAM'S REVIEW AND DETERMINATION DATED, AUGUST 28, 2014. (SEE, EXHIBIT H) PLAINTIFF SUBMITTED AN APPEAL ON DATE OF SEPTEMBER 3, 2014; AND ALTHOUGH CORC UNANIMOUSLY ACCEPTED PLAINTIFF'S GRIEVANCE IN PART, THE ISSUES CENTRAL TO DEFENDANT'S ACTIONS AND INDIFFERENCE TO PLAINTIFF'S SERIOUS MEDICAL NEEDS, WAS DENIED BY A DETERMINATION DATED, JANUARY 28, 2015. (SEE, EXHIBIT I) (SEE ALSO, FOOTNOTE, AT N.3)

19.) AS A RESULT OF DEFENDANT'S MAKRAM'S AND CUNNINGHAM'S FOREGOING ACTIONS AND THE FAILURE TO RECOGNIZE AND MAKE ACCOMMODATIONS FOR PLAINTIFF'S SERIOUS MEDICAL CONDITION, PLAINTIFF CONTINUED TO SUFFER INJURY, WHICH INCLUDED: FURTHER WEIGHT LOSS, SEVERE ANXIETY, MENTAL ANGUISH AND DURESS.

20.) PLAINTIFF FILED AN ADDITIONAL GRIEVANCE ON DATE OF SEPTEMBER 17, 2015 RELEVANT TO THESE ISSUES AND THE CONTINUING DENIAL OF A MEDICALLY APPROVED -

N.3: ONCE MORE, IT IS NOTED THAT CORC FAILED TO PROVIDE PLAINTIFF WITH A TIMELY REVIEW AND DETERMINATION OF HER GRIEVANCE APPEAL WHICH CONCERNED SERIOUS MEDICAL ISSUES IN ACCORDANCE WITH THE MANDATED REGULATORY PROVISIONS OF TITLE 7 N.Y.C.R.R. 701.5

FEED-IN CELL PERMIT. (SEE, EXHIBIT J) FOR REASONS UNKNOWN TO PLAINTIFF, THIS GRIEVANCE WAS NOT RESPONDED TO, NOR DID PLAINTIFF RECEIVE A DETERMINATION IN REGARDS TO IT FROM THE FACILITY'S IGRC OFFICE, DEFENDANT CUNNINGHAM, OR THE CENTRAL OFFICE REVIEW COMMITTEE (CORC).

21.) BY THE GRIEVANCES AFOREMENTIONED AND DETAILED HEREIN, AND THE CORC DETERMINATIONS ATTACHED TO THIS AFFIRMATION (EXH. E ; EXH. I), PLAINTIFF EXHAUSTED ALL ADMINISTRATIVE REMEDIES AVAILABLE TO HER AGAINST DEFENDANT MAKRAM AND DEFENDANT CUNNINGHAM.

CAUSES OF ACTION

A.) EQUAL PROTECTION CLAIM BASED ON THE CLASS OF ONE THEORY.

22.) DEFENDANT MAKRAM'S INAPPROPRIATE STATEMENTS AND REFERENCES DELIANATING PLAINTIFF'S GENDER IDENTITY CONSTITUTED A VIOLATION OF PLAINTIFF'S RIGHTS OF EQUAL PROTECTION AS A CLASS OF ONE UNDER THE FOURTEENTH AMENDMENT.

23.) DEFENDANT MAKRAM'S STATEMENTS AND REFERENCES DIRECTED TOWARDS PLAINTIFF'S GENDER IDENTITY IN COMBINATION WITH DEFENDANT'S STATEMENTS REGARDING THE ABILITY TO PROVIDE OR WITHHOLD MEDICAL TREATMENT ON THIS BASIS SUFFICIENTLY SHOW DEFENDANT'S INTENTIONAL AND IRRATIONAL TREATMENT OF PLAINTIFF IN A MANNER THAT WAS DIFFERENT FROM OTHER SIMILARLY SITUATED INDIVIDUALS AND CONSTITUTED A VIOLATION OF PLAINTIFF'S RIGHTS AS A SINGULAR CLASS UNDER

THE FOURTEENTH AMENDMENT.

24.) AS A RESULT OF DEFENDANT MAKRAM'S INAPPROPRIATE STATEMENTS AND REFERENCES DIRECTED AT PLAINTIFF'S GENDER IDENTITY AND DEFENDANT'S REFUSAL TO PROVIDE MEDICAL TREATMENT ON THE BASIS OF THIS UNFAIR DIFFERENTIATION, PLAINTIFF SUFFERED CONTINUOUS INJURY IN THE FORM OF MENTAL ANGUISH AND DURESS.

B.) DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS.

25.) DEFENDANT'S REFUSAL AND FAILURE TO ACT UPON HER KNOWLEDGE OF PLAINTIFF'S DOCUMENTED NEUROGENIC BLADDER DISORDER AND HISTORY OF SEVERE INCONTINENCE CONSTITUTED DELIBERATE INDIFFERENCE TO PLAINTIFF'S SERIOUS MEDICAL CONDITION AND NEEDS IN VIOLATION OF THE EIGHTH AMENDMENT.

26.) DEFENDANT'S REFUSAL TO PROVIDE PLAINTIFF WITH REASONABLE MEDICAL ACCOMMODATIONS IN RESPECTS TO HER CONDITION CONSTITUTED DEPRIVATION OF TREATMENT OF A MEDICAL CONDITION WHICH WAS SUFFICIENTLY SERIOUS AND AMOUNTS TO A VIOLATION OF THE EIGHTH AMENDMENT.

27.) DEFENDANT'S REFUSAL AND FAILURE TO INVESTIGATE, EVALUATE, AND ASSESS PLAINTIFF'S SERIOUS MEDICAL CONDITION CONSTITUTED DELIBERATE AND WILLFUL INDIFFERENCE IN LIGHT OF DIAGNOSTIC DOCUMENTATION PLAINTIFF PROVIDED DEFENDANT MAKRAM WITH REGARDS TO HER SERIOUS MEDICAL CONDITION AMOUNTED TO AN EIGHTH AMENDMENT VIOLATION.

28.) DEFENDANT MAKRAM'S DISREGARD TO THE EXCESSIVE RISKS AND SAFETY PRESENTED BY PLAINTIFF'S SERIOUS MEDICAL CONDITION CONSTITUTED A DELIBERATE INDIFFERENCE TO PLAINTIFF'S SERIOUS MEDICAL NEEDS AND CAUSED PLAINTIFF TO SUFFER CONTINUOUS INJURY, INCLUDING, SEVERE ANXIETY, WEIGHT LOSS, MENTAL ANGUISH AND DURESS.

29.) DEFENDANT MAKRAM, AT ALL TIMES RELEVANT WAS ACTING UNDER COLOR OF STATE LAW IN RESPECTS TO THE ALLEGATIONS SET FORTH, AND IS BEING SUED IN HER INDIVIDUAL AND OFFICIAL CAPACITY.

C.) DELIBERATE INDIFFERENCE, WITH THE REQUISITE FACTS PRESENTED REGARDING PERSONAL INVOLVEMENT.

30.) DEFENDANT CUNNINGHAM PARTICIPATED DIRECTLY IN THE ALLEGED CONSTITUTIONAL VIOLATIONS OF PLAINTIFF'S EIGHTH AND FOURTEENTH AMENDMENT RIGHTS BY PROVIDING SUPERINTENDENT REVIEW AND DETERMINATIONS OF PLAINTIFF'S GRIEVANCES ON DATES OF JUNE 16, 2014, AND AUGUST 28, 2014 AND FAILING TO PROVIDE RELIEF AND REMEDY IN RESPECTS TO PLAINTIFF'S SERIOUS MEDICAL NEEDS AND CONCERNS.

31.) DEFENDANT CUNNINGHAM FAILED TO PROPERLY PERSONALLY INVESTIGATE PLAINTIFF'S GRIEVANCES CONCERNING WOODBOURNE MEDICAL STAFF'S INDIFFERENCE TO PLAINTIFF'S SERIOUS MEDICAL CONDITION AND NEEDS.

32.) DEFENDANT CUNNINGHAM, HAVING BEEN INFORMED VIA PLAINTIFF'S GRIEVANCES, FAILED TO PERSONALLY ADDRESS THE INAPPROPRIATE STATEMENTS AND REFERENCES DIRECTED

TOWARDS PLAINTIFF'S GENDER IDENTITY WHICH WERE MADE BY DEFENDANT MAKRAM, A PERSON UNDER EMPLOY WITHIN THE WOODBOURNE CORRECTIONAL FACILITY.

33.) DEFENDANT MAKRAM'S REVIEW AND DETERMINATIONS OF PLAINTIFF'S GRIEVANCES EFFECTUALLY CONSTITUTED A POLICY AND DECISION UNDER WHICH THE DELIBERATE INDIFFERENCE TO PLAINTIFF'S SERIOUS MEDICAL CONDITION AND NEEDS CONTINUED TO OCCUR; ADDITIONALLY, DEFENDANT'S DETERMINATIVE STATEMENT THAT: "THERE IS NO MEDICAL OR PSYCHOLOGICAL NEED FOR GRIEVANT TO BE FED IN CELL", CONSTITUTED A POLICY OUTSIDE OF HIS QUALIFICATION WHICH DECIDED AN ISSUE DIRECTLY RELEVANT TO PLAINTIFF'S SERIOUS MEDICAL NEEDS.

34.) FURTHER, DEFENDANT CUNNINGHAM FAILED TO PROVIDE RESTROOM AND BATHROOM FACILITIES WITHIN THE FACILITY'S MESSHALL; THUS MAKING SUCH FACILITIES AVAILABLE FOR PLAINTIFF WHOM SUFFERED FROM A DOCUMENTED MEDICAL CONDITION, AND SIMILARLY SITUATED INMATES.

35.) DEFENDANT CUNNINGHAM, AT ALL TIMES RELEVANT WAS ACTING UNDER COLOR OF STATE LAW IN RESPECTS TO THE FACTUAL ALLEGATIONS SET FORTH, AND IS BEING SUED IN HIS INDIVIDUAL AND OFFICIAL CAPACITY.

RELIEF REQUESTED

WHEREFORE, PLAINTIFF RESPECTFULLY REQUESTS THAT THIS COURT ENTER JUDGMENT GRANTING PLAINTIFF THE FOLLOWING RELIEF:

36.) A DECLARATION THAT THE ACTS AND OMISSIONS -

DESCRIBED HEREIN VIOLATED PLAINTIFF'S RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.

37.) NOMINAL DAMAGES IN THE AMOUNT OF: \$1.00

38.) COMPENSATORY DAMAGES IN THE AMOUNT OF: \$10,000 AGAINST EACH DEFENDANT, JOINTLY AND SEVERALLY.

39.) PUNITIVE DAMAGES IN THE AMOUNT OF: \$9,000.00 AGAINST EACH DEFENDANT.

40.) A JURY TRIAL ON ALL ISSUES TRIABLE BY JURY.

41.) PLAINTIFF'S COSTS WITH RESPECTS TO THIS ACTION.

42.) ANY AND OTHER RELIEF AS THIS COURT MAY DEEM APPROPRIATE AND JUST.

DATED: OCTOBER 5, 2018
ELMIRA, NEW YORK

RESPECTFULLY SUBMITTED,

Sergey Shtilman,
SERGEY SHTILMAN, 98A1497
PLAINTIFF / PRO SE,
ELMIRA CORRECTIONAL FAC.
P.O. BOX 500
ELMIRA, NY. 14902-0500

JOSHUA I. GURIN, M.D., Ph.D.
F.A.C.S., F.A.C.B.
10 EAST 78th STREET
NEW YORK, N. Y. 10021
Telephone (212) 628-5444

3/30/93

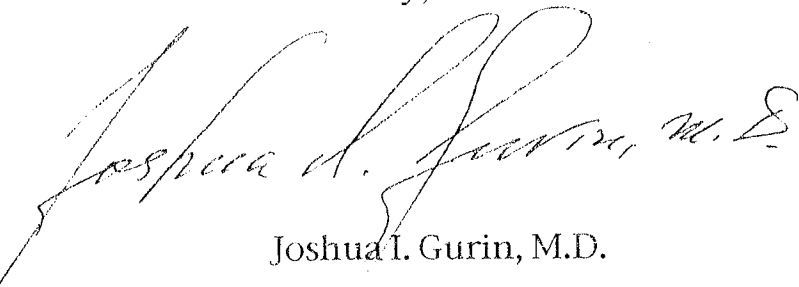
Re: Sergey Shtilman

To whom it may concern:

The patient named above has been under my supervision and treatment for the past 10 years. He suffers from neurogenic bladder and frequent incontinence. Unfortunately, the medications prescribed for his main medical problem (schizophrenia) aggravated his bladder condition.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Joshua I. Gurin, M.D.", written in dark ink. The signature is fluid and stylized, with the first name "Joshua" being particularly prominent.

Joshua I. Gurin, M.D.

* EXHIBIT A *

FORM 2131E (REVERSE) (9/12)

Response of IGRC:

June 10, 2014

Shtilman, S. # 98-A-1497

WB-16181-14

Upon a full hearing of the facts in this case, committee notes that grievant's issues have the attention of the facility's medical staff. The NA's investigation report indicates that grievant does not meet the criteria to receive his meals in cell. With respect to grievant's second action requested, as a patient in a NYS-Correctional facility per patient Bill of Rights. Inmate has a right to respectful and considerate care.

Date Returned to Inmate: _____

IGRC Members: _____

Chairperson: _____

Return within 7 calendar days and check appropriate boxes.*

- ☒ I disagree with IGRC response and wish to appeal to Superintendent.
- ☐ I agree with the IGRC response and wish to appeal to the Superintendent.

- ☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent.
- ☐ I apply to the IGP Supervisor for review of dismissal.

Signed: _____

Grievant

JUN 10, '14

Date

Grievance Clerk's Receipt

Date

To be completed by Grievance Clerk.Grievance Appealed to the Superintendent: _____
DateGrievance forwarded to the Superintendent for action: _____
Date*** EXHIBIT B ***

* An exception to the time limit may be requested under Directive #4040, section 701.6(g).



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

WOODBOURNE CORRECTIONAL FACILITY
P.O. Box 1000
Woodbourne, NY 12788

ROBERT F. CUNNINGHAM
SUPERINTENDENT

To: T. Terbush, Grievance Supervisor

From: J. Barrett Wilson, Nurse Administrator


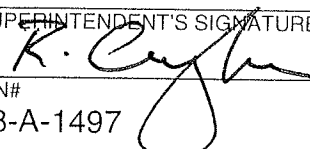
Subject: Grievance #WB 16181-14

Date: 6/3/14

Inmate Shtilman does not meet the medical criteria to receive his meals in his cell. I conferred with his OMH provider. There is no psychiatric reason that he can't go to the mess hall for his meals.

The RN he saw at sick call on 5/29/14 simply informed him that he does not medically qualify for a feed-in-cell permit. At no time did she refer to his sexuality or call him a profane name.

EXHIBIT C

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION INMATE GRIEVANCE PROGRAM SUPERINTENDENT</p>	GRIEVANCE NO. WB 16181-14	DATE FILED 6-2-14
	FACILITY Woodbourne Correctional Facility	POLICY DESIGNATION
	TITLE OF GRIEVANCE	CLASS CODE 22
	SUPERINTENDENT'S SIGNATURE 	DATE 6-16-14
GRIEVANT Shtilman, S.	DIN# 98-A-1497	HOUSING UNIT

The response of the Nurse Administrator stated that after conferring with OMH, there is no medical or psychological need for grievant to be fed in cell. Action requested to be fed in cell is not accepted.

In addition, nurse at sick call informed grievant as such and denies referring to his sexuality or using profanity.

I WON'T LIE ABOUT ANYTHING. I TRULY DO NEED HELP. NOTHING WAS DONE
APPEAL STATEMENT AT THE FACILITY LEVEL.

If you wish to refer the above decision of the Superintendent please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) days from receipt of this notice to file your appeal. * Please state why you are appealing this decision to C.O.R.C.

IT'S BECOMING INCREASINGLY DIFFICULT FOR ME TO WALK-ESPECIALLY UP-&DOWN
THE STAIRS! NOT ONLY I AM SLOW AND CANNOT GET UP A FAN FOR DUE CHOW-I ALSO
MAY NOT STAY-UP ALL NIGHT-VERY LOW FUNCTIONING, MY BACK, LOWER-AND UPPER IS VERY SORE.
I GOT LEG CRAMPS, DIZZY, IN MIDDLES OF THE NIGHT-MORNING, GOT DIZZY-BLEED PRESSURE, HYPERTENSION,
AND NEED A FULL DISABILITY. I'M ON SSP SINCE 1987 AND I HAVE IT IN MY BELIEVE RECORDS
HOSPITAL RECORDS. NEED MY WALKER/REPRODUCTION/ACCOMMODATIONS/DISABILITY/CELL PROGRAM
RESTORATION.

Grievant's signature



JUN. 19, 2014 (THURSDAY).

Date


Grievance Clerk's signature

Date

* Extensions to the time limits may be requested under Directive #4040, section 701.6(g)

CC: Grievant
file

* EXHIBIT D *

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p>	Grievance Number WB-16181-14	Desig./Code I/22	Date Filed 6/2/14
	Associated Cases		
	Facility Woodbourne Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Title of Grievance Want Feed Up Due To Medical Conditions		

9/24/14

GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART

Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of the Division of Health Services, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the grievant was seen at sick call on 5/29/14 requesting a feed-in cell permit, and was advised that he did not meet the medical criteria to be issued one at that time. CORC also notes that Nurse D... denies verbally harassing and discriminating against the grievant or being unprofessional during sick call encounters. In addition, Nurse Administrator B... states that the grievant's OMH provider was consulted and that there is currently no psychiatric restrictions prohibiting him from eating meals in the messhall.

CORC asserts that, consistent with Health Services Policy Manual Item #1.43 - Specialty Care Referrals, the Facility Health Services Directors (FHSD) have the sole responsibility for providing treatment to the inmates under their care.

In regard to the grievant's appeal, CORC asserts that treatment is based on evaluation by medical professionals, and finds insufficient evidence of discrimination or malfeasance by staff. He is advised to address further medical concerns via facility sick call procedures and mental health issues to OMH staff for the most expeditious means of resolution.

RAS/

* EXHIBIT E *



STATE OF NEW YORK

**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**

WOODBOURNE CORRECTIONAL FACILITY

99 Prison Road

P.O. Box 1000

Woodbourne, NY 12788

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

ROBERT F. CUNNINGHAM
SUPERINTENDENT


TO: S. Shtilman, 98A1497

FROM: B. Schwebler, SORC

DATE: 6/24/14

SUBJECT: Accommodations

The Office of Mental Health and the medical department staff are aware of your issues and concerns and they are in the best position to address those issues. If you need to be transferred for medical or mental health reasons, they will let the guidance unit staff know.


B. Schwebler, SOEC

cc: Guidance Folder

* EXHIBIT F *



STATE OF NEW YORK

**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**

THE HARRIMAN STATE CAMPUS – BUILDING 2

1220 WASHINGTON AVENUE

ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

CARL J. KOENIGSMANN, M.D.
DEPUTY COMMISSIONER/CHIEF MEDICAL OFFICER

September 2, 2014

Mr. Sergey Shtilman, 98A1497
Woodbourne Correctional Facility
99 Prison Rd., Box 1000
Woodbourne, NY 12788

Dear Mr. Shtilman,

Deputy Commissioner Koenigsmann has asked me to respond to your recent letter.

The Division of Health Services has investigated your concerns with the Health Services staff at Woodbourne Correctional Facility. I have been advised that a feed in cell permit is not medically indicated for you. With regards to your complaint of back pain, you have been offered appropriate medication. Also, your last blood pressure reading was within normal limits. You are encouraged to discuss your medical concerns at your next appointment with your provider.

It is suggested that you continue to bring your medical concerns to the attention of the health care staff using the existing sick call procedure. I am sure they will make every effort to address your needs.

Sincerely,


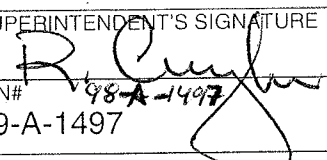
A handwritten signature in cursive script, appearing to read "Megan Yaiser".

Megan Yaiser
Regional Health Services Administrator

MEY/cab

cc: FHSD, Woodbourne Correctional Facility

* EXHIBIT G *

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION INMATE GRIEVANCE PROGRAM SUPERINTENDENT	GRIEVANCE NO. WB 16245-14	DATE FILED 8-18-14
	FACILITY Woodbourne Correctional Facility	POLICY DESIGNATION
	TITLE OF GRIEVANCE	CLASS CODE 22
	SUPERINTENDENT'S SIGNATURE 	DATE 8-28-14
GRIEVANT Shtilman, S.	DIN# 98-A-1497 09-A-1497	HOUSING UNIT B-1-9

Grievant's action requested is granted to the extent that grievant has access to medical treatment. He has utilized the sick call procedure for a variety of complaints and has been seen by various staff. Grievant needs to follow the medical direction provided.

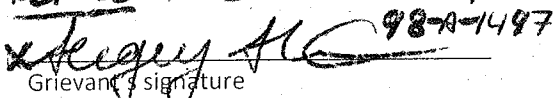
Grievant's action requested to have medical staff removed and replaced is denied. The request is unfounded and unreasonable.

There are no provisions for restitution or claims with the grievance mechanism. If grievant has a claim for missing property he will have to file a claim form.

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) days from receipt of this notice to file your appeal. * Please state why you are appealing this decision to C.O.R.C.

FIRST-I DID PUT THE CLAIM-IN FOR ALL MY STOLEN, EXTORTED & LOST
PROPERTY IN PREVIOUS FACILITIES. SECOND-I MAY NOT GO UNTREATED JUST
BECAUSE I "LOOK DIFFERENT" / BECAUSE I AM NOT EVEN ALLOWED TO GO
TO SICK CALL(S) NO MATTER I'M A SICK PATIENT AND ONLY GO AS NEEDED / BUT THEY
REFUSE TO EVEN SEE ME, LET ALONE GIVE ME TREATMENT. THANK YOU IN ADVANCE.


 Grievant's signature

SEP. 3, 2014
 Date

Grievance Clerk's signature

Date

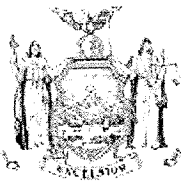
* Extensions to the time limits may be requested under Directive #4040, section 701.6(g)

CC: Grievant
 file

* EXHIBIT H *

R-09

Shtilman, 9841497

 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p>	Grievance Number WB-16245-14	Desig./Code I/22	Date Filed 8/21/14
	Associated Cases		
	Facility Woodbourne Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Title of Grievance Proper Medical Treatment		

1/28/15

GRIEVANT'S REQUEST UNANIMOUSLY ACCEPTED IN PART

Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of the Division of Health Services, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the grievant presented at sick call on 8/14/14 requesting a feed in cell permit and medication change, both of which were previously addressed multiple times and determined not to be medically necessary. RN D... advised him of this, he subsequently became agitated and demanding, and the encounter was terminated. It is noted that he has been seen at sick call numerous times for a variety of issues, and CORC asserts that he continues to have access to sick call.

CORC asserts that, consistent with Health Services Policy Manual Item #1.43 - Specialty Care Referrals, the Facility Health Services Directors (FHSD) have the sole responsibility for providing treatment to the inmates under their care.

CORC notes that Directive #4040, § 701.1, states, in part, that the grievance program is not intended to support an adversary process. CORC advises the grievant to address safety matters to area supervisory staff, and mental concerns to OMH staff. In addition, CORC asserts that he had the opportunity to file a claim for missing property in accordance with Directive #2733.

With respect to the grievant's appeal, CORC has not been presented with sufficient evidence of malfeasance, negligence, or discrimination by staff.

CMV/rjq

* EXHIBIT I *

TO: I.G.R.C. / C.O.R.C. REFERRAL
FROM: SERGEY SHILMAN, 98A-1497
DATE: SEPT. 17, 2015
SUBJECT: FEED-UP(S)

Dear Honorable I.G.R.C.!

WHILE CLEANING ALL MORNING ON B-1 COMPANY - AS A PORTER - I WAS DENIED MY FEED-UP TRAY. YOU HAVE TO WALK (!) (WITH A BIG ATTITUDE!) - TO THE MESSHALL - NO MORE NOW SICK YOU ARE - IF YOU DON'T WANT TO STARVE TO DEATH!" - I WAS TOLD ON NUMEROUS OCCASIONS, INCLUDING, BUT NOT LIMITED TO, OUR PREVIOUS SUPERINTENDANT, ROBERT F. CUNNINGHAM, WHO, AS WE ALL KNOW, GOT TRANSFERRED TO FISHKILL C.F. - BECAUSE OF THE DEATH OF AN INMATE / RESIDENT AT THE SAME FACILITY, FISHKILL. IT'S POSSIBLE - ALTHOUGH UNCONFIRMED 100% - THAT THE VICTIM WAS AN OMA PATIENT. HOWEVER - GETTING BACK TO THE ABOVE/MORE - MENTIONED ISSUE - I SAW INMATES HERE, AS WCF - WAY LESS SICK THAN ME, THE WINTER, WHO ARE GETTING THEIR FEED-UPS IN COWS / BUT - NO, I HAVE TO BE ALWAYS DISCRIMINATED AGAINST - AND, OF COURSE, DR. MARIE MAURAN WILL NOT DO ANYTHING OF THIS NATURE OF FEED-UP FOR ME! THIS IS THE REASON WHY I AM SUING MAURAN - AND - AND TO SEE THE IG/OSI INVOLVED. I HOPE WE ALL UNDERSTAND....

Thank You For Your Future Assistance / Referral to C.O.R.C. IN ALBANY,
 SINCERELY YOURS, WITH GRATEFUL RESPECT, SUBMITTED,

C.C.

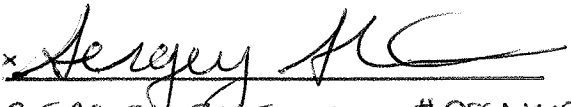
* EXHIBIT J *

x Sergey Shilman 98A-1497

VERIFICATION

THE UNDERSIGNED PLAINTIFF, SERGEY SHILMAN, HAS READ THE FOREGOING AFFIRMATION OF RE-PLEADING AND HEREBY VERIFIES THAT THE MATTERS ALLEGED THEREIN ARE TRUE, EXCEPT AS TO THOSE MATTERS STATED TO BE BASED ON INFORMATION AND BELIEF, AND, AS TO THOSE MATTERS, PLAINTIFF BELIEVES THEM TO BE TRUE. PLAINTIFF CERTIFIES THAT THE FOREGOING IS TRUE AND CORRECT UNDER PENALTY OF PERJURY.

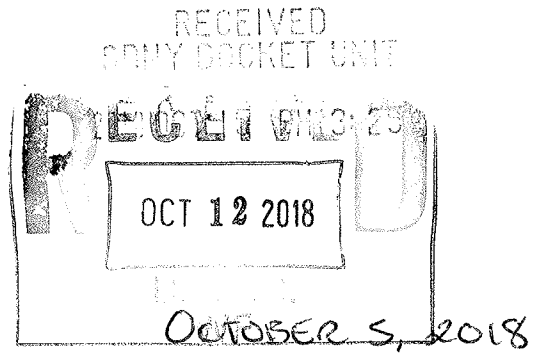
DATED: OCTOBER 5, 2018
ELMIRA, NEW YORK

* 
SERGEY SHILMAN, #98A1497
PLAINTIFF/PRO SE
ELMIRA CORRECTIONAL FAC.
P.O. BOX 500
ELMIRA, N.Y. 14902-0500

PRO SE CLERK/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
300 QUARROPAS STREET
WHITE PLAINS, NY. 10601

RE: SHILMAN V. MAHRAN, ET. AL.
NO. 14-CV-6589 (NSR)



DEAR PRO SE CLERK:

PLEASE FIND ENCLOSED, AN AFFIRMATION OF RE-PLEADING
RELEVANT TO THE ABOVE-REFERENCED ACTION FOR FILING IN
THIS COURT.

I WOULD APPRECIATE IT IF IT MAY BE BROUGHT BEFORE
THE HON. NELSON A. ROMAN AT THE EARLIEST OPPORTUNITY.

THANK YOU FOR YOUR TIME, AND I PATIENTLY AWAIT YOUR
OFFICE'S ACKNOWLEDGMENT OF RECEIPT OF THESE PAPERS.

Respectfully,

SERGEY SHILMAN, #98A1497
PLAINTIFF / PRO SE,
ELMIRA CORRECTIONAL FACILITY
P.O. BOX 500
ELMIRA, NEW YORK 14902-0500

ENC.

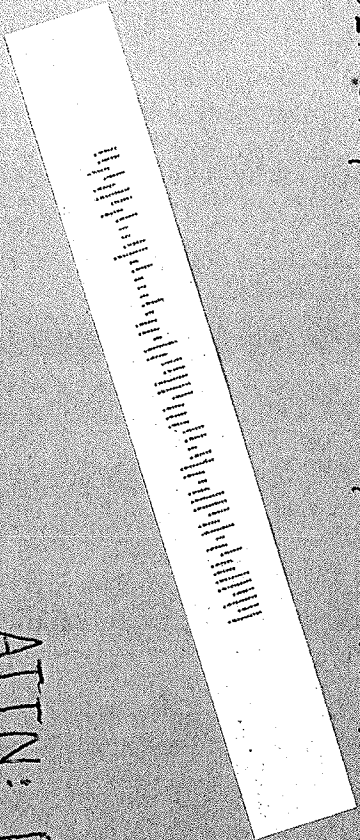
CC: OFFICE OF THE ATTORNEY GENERAL /
COUNSEL FOR RESPONDENT,
/FILE.

ELMIRA CORRECTIONAL & RECEPTION CENTER

P.O. BOX 500

ELMIRA, NEW YORK 14902-0500

SERGEY SHILMAN, #98A497



ELMIRA
CORRECTIONAL
FACILITY



Correctional Facility

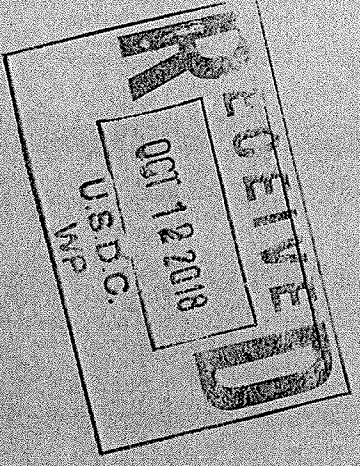


04

USM_{WP}
SDNY

ATTN: PRO SE CLERK/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
300 QUARROPAS STREET
WHITE PLAINS, NEW YORK 10601



* LEGAL MAIL *

* USE WEEKLY LEGAL MAIL POSTAGE *

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